



February 29, 2000

Mr. Robert L. Kane
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2000-0778

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132538.

The University of Texas Southwestern Medical Center (the "University") received a request for various documents pertaining to Dr. Grant O'Keefe, M.D. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. In the alternative, you claim the information is excepted from disclosure under sections 552.107 and 552.111. We have considered the exceptions you claim and reviewed the submitted information.¹

You assert that the documents submitted are information of a medical or peer review committee. Section 160.007 of the Occupational Code states that, "[e]xcept as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged." Section 161.032(a) of the Health and Safety Code provides that "records and proceedings of a medical committee are confidential." However, neither section 160.007 nor section 161.032 make confidential "records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

medical center or health science center, or extended care facility.” Health & Safety Code § 161.032(b); see *Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1, 10 (Tex. 1996) (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in regular course of business).

In *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988), the Texas Supreme Court indicated that “routinely accumulated information” unless submitted or created in connection with a committee’s deliberative process, does not constitute confidential committee records. In *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 648 (Tex. 1985), the court stated that records “gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected.”² See *Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1 at 9-10 (discussing business records and holdings in *Barnes* and *Jordan*). Thus, even if records are submitted to or created by a medical peer review or medical committee, the records are not generally confidential if made or maintained in the regular course of business. Health & Safety Code § 161.032(b). We have reviewed the documents at issue and find that the University has not established that the information was prepared by or at the direction of any particular committee for committee purposes. Consequently, you have not established that these records are confidential under either section 160.007 of the Occupations Code or section 162.032 of the Health and Safety Code.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *Id.* at 5. When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. None of the documents submitted contains any confidential communications from a client to the attorney or the attorney’s legal advice or opinions. Section 552.107(2) provides that information is excepted from required disclosure . . . if “a court by order has prohibited disclosure of the information.” You have not provided a court order granting protection from disclosure of the documents submitted. In addition, you do not explain the applicability of section 552.107(1)(2) to the documents. Therefore, you may not withhold the documents at issue under section 552.107.

²*Barnes* and *Jordan* both interpreted the predecessor statute to section 161.032 of the Health & Safety Code, section 3 of article 447d, Vernon’s Texas Civil Statutes, which provided, in part, that “records made or maintained in the regular course of business” were not confidential.

Finally, section 552.111 excepts “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. However, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Furthermore, an agency’s policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). The submitted documents consist of copies of intraagency memoranda and correspondence from the University to Dr. O’Keefe and the Texas State Board of Medical Examiners. The documents encompass internal administrative or personnel matters and do not reflect advice, recommendations, and opinions regarding the policymaking processes of the University. As you do not explain the applicability of section 552.111 to the documents, you may not withhold the documents at issue under section 552.111.

We additionally note that some of the documents contain Dr. O’Keefe’s social security number. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* See Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the University pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the University to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the University, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the University should ensure that these numbers were not obtained or are maintained by the University pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, with the possible exception of Dr. O’Keefe’s social security number, you may not withhold the requested documents under section 552.101, 552.107 or 552.111.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

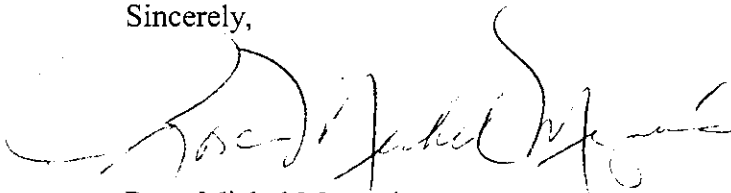
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía", written over a horizontal line.

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 132538

Encl. Submitted documents

cc: Ms. Patricia Moore
1827 Will Scarlet Road
Arlington, Texas 76013
(w/o enclosures)